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LOS ANGELES WATERKEEPER®

July 22, 2016

VIA CERTIFIED MAIL

Allan Company Recycling
14618 Arrow Highway
Baldwin Park, California 91706

Stephen A. Young
Registered Agent for Service of Process for
Allan Company
14620 Joanbridge Street
Baldwin Park, California 91706

Re: Notice of Violation and Intent to File Suit Under the Clean Water Act

To Whom It May Concern:

I am writing on behalf of Los Angeles Waterkeeper ("Waterkeeper") regarding violations of the Clean Water Act[1] and California's Industrial Storm Water Permit[2] ("Storm Water Permit") occurring at the industrial facility with its main address at: 14618 Arrow Highway, Baldwin Park, California 91706 ("Facility"). The purpose of this letter is to put Allan Company ("Allan Co."), as the owner and/or operator of the Facility, on notice of the violations of the Storm Water Permit occurring at the Facility, including, but not limited to, discharges of polluted storm water from the Facility into local surface waters. Violations of the Storm Water Permit are violations of the Clean Water Act. As explained below, Allan Co. is liable for violations of the Storm Water Permit and the Clean Water Act.

Section 505(b) of the Clean Water Act, 33 U.S.C. § 1365(b), requires that sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Clean Water Act, 33 U.S.C. § 1365(a), a citizen must give notice of his/her intention to file suit. The Clean Water Act requires that notice must be given to the alleged violator, the Administrator of the United States Environmental Protection Agency ("EPA"), the Regional Administrator of the EPA, the Executive Officer of the water pollution control agency in the State in which the violations

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[1] Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.*

[2] National Pollution Discharge Elimination System ("NPDES") General Permit No. CAS000001, Water Quality Order No. 92-12-DWQ, Order No. 97-03-DWQ, as amended by Order No. 2014-0057-DWQ. Between 1997 and June 30, 2015, the Storm Water Permit in effect was Order No. 97-03-DWQ, which Waterkeeper refers to as the "1997 Permit." The Storm Water Permit was reissued on July 1, 2015, pursuant to Order No. 2014-0057-DWQ, which Waterkeeper refers to as the "2015 Permit."

occur, and, if the alleged violator is a corporation, the registered agent of the corporation. *See* 40 C.F.R. § 135.2(a)(1).

This letter is being sent to you as the responsible owner and operator of the Facility, or as the registered agent for this entity. This notice letter ("Notice Letter") is issued pursuant to 33 U.S.C. §§ 1365(a) and (b) of the Clean Water Act to inform Allan Co. that Waterkeeper intends to file a federal enforcement action against Allan Co. for violations of the Storm Water Permit and the Clean Water Act sixty (60) days from the date of this Notice Letter.

I. BACKGROUND

A. Los Angeles Waterkeeper.

Los Angeles Waterkeeper is a non-profit 501(c)(3) public benefit corporation organized under the laws of California with its main office at 120 Broadway, Suite 105, Santa Monica, California 90401. Founded in 1993, Waterkeeper has approximately 3,000 members who live and/or recreate in and around the Los Angeles area. Waterkeeper is dedicated to the preservation, protection, and defense of the inland and coastal surface and groundwaters of Los Angeles County (including the San Gabriel River) from all sources of pollution and degradation. To further this mission, Waterkeeper actively seeks federal and state implementation of the Clean Water Act. Where necessary, Waterkeeper directly initiates enforcement actions on behalf of itself and its members.

Members of Waterkeeper reside in Los Angeles County, and near the San Gabriel River (hereinafter "Receiving Water"). As explained in detail below, Allan Co. continuously discharges pollutants into the Receiving Water, in violation of the Clean Water Act and the Storm Water Permit. Waterkeeper members use the Receiving Water to swim, boat, kayak, bird watch, view wildlife, hike, bike, walk, and run. Additionally, Waterkeeper members use the waters to engage in scientific study through pollution and habitat monitoring and restoration activities. The unlawful discharge of pollutants from the Facility into the Receiving Water impairs Waterkeeper members' use and enjoyment of these waters. Thus, the interests of Waterkeeper's members have been, are being, and will continue to be adversely affected by Allan Co.'s failure to comply with the Clean Water Act and the Storm Water Permit.

B. The Owner and Operator of the Facility.

Information available to Waterkeeper indicates that Allan Co. is the owner and operator of the Facility. Allan Co. is an active California corporation and its registered agent is: Stephen A. Young, 14620 Joanbridge Street, Baldwin Park, California 91706.

C. The Facility's Storm Water Permit Coverage.

Facilities that discharge storm water associated with specified industrial activities are required to apply for coverage under the Storm Water Permit by submitting a Notice of Intent ("NOI") to the State Water Resources Control Board ("State Board") to obtain Storm Water

Permit coverage.

Information available to Waterkeeper indicates that Allan Co. first obtained coverage under the Storm Water Permit on March 16,1992; filed an NOI to continue its coverage of the 1997 Permit on May 21, 1997 ("1997 NOI"); and submitted an NOI to continue the Facility's coverage under the reissued Storm Water Permit on June 25, 2015 ("2015 NOI"). Allan Co. also submitted a Storm Water Pollution Prevention Plan ("SWPPP") dated "June 2015" with an March 29, 2015 revision date (hereinafter referred to as "2015 SWPPP"). The 2015 SWPPP is dated June 8, 2015 and is signed by the plant manager who is identified as Ernesto Lopez.

The 1997 NOI identifies the operator of the Facility as "Allan Company" and the 2015 NOI identifies the operator as "Allan Co". Both the 1997 and 2015 NOIs identify the Facility as being located at 14618 Arrow Highway in Baldwin, California 91706." The 2015 NOI lists the "Total Site Size" as 2 acres, but lists the "industrial Area exposed to Storm Water" as 4.5 acres. The 2015 SWPPP also lists the "Facility Size" as 4.5 acres. Thus, there is a discrepancy with size of the Facility listed on the 2015 NOI, however, it appears that Allan Co. has encompassed the entire 4.5 acres in Permit coverage and storm water management.[3] The 2015 NOI lists the Waste Discharge Identification ("WDID") number for the Facility as 4 19I000752. The 1997 NOI and the 2015 NOI identifies the Standard Industrial Classification ("SIC") code for the Facility as 5093 (Scrap and Waste Material). The 1997 NOI and the 2015 NOI list the "Receiving Water" as the San Gabriel River. The 2015 SWPPP lists the Receiving Water as "San Gabriel River Reach 3."

D. <u>Storm Water Pollution.</u>

With every significant rainfall event millions of gallons of polluted storm water originating from industrial operations such as the Facility discharge into storm drains and local waterways. The consensus among agencies and water quality specialists is that storm water pollution accounts for more than half of the total pollution entering surface waters each year. Such discharges of pollutants from industrial facilities contribute to the impairment of downstream waters and aquatic dependent wildlife. These contaminated discharges can and must be controlled for the ecosystem to regain its health.

Although pollution and habitat destruction have drastically diminished once-abundant and varied fisheries, these waters are still essential habitat for dozens of fish and bird species as well as macro-invertebrate and invertebrate species. Storm water and non-storm water contaminated with sediment, heavy metals, and other pollutants harm the special aesthetic and recreational significance that surface waters have for people in local communities. The public's use of local waterways exposes many people to toxic metals and other contaminants in storm water discharges. Non-contact recreational and aesthetic opportunities, such as wildlife observation, are also impaired by polluted discharges to local waterways.

[3] To the extent Allan Co. has failed to obtain coverage for the entire 4.5 acres Waterkeeper puts Allan Co. on notice that any discharges from portions of the Facility not covered by its NOI are unpermitted discharges in violation of section 301(a) of the Clean Water Act.

Based on EPA's Industrial Storm Water Fact Sheet for Sector F: Primary Metals Facilities, polluted discharges from industrial activities like those conducted at the Facility contain pH affecting substances; metals, such as iron and aluminum; toxic metals, such as lead, zinc, cadmium, chromium, copper, arsenic, cyanide, and mercury; toxic organic pollutants; chemical oxygen demand ("COD"); biological oxygen demand ("BOD"); total suspended solids ("TSS")[4]; benzene, fuel additives, gasoline, oil and grease ("O&G"), antifreeze and diesel fuels; coolants and solvents; and, trash and debris. Many of these pollutants are on the list of chemicals published by the State of California as known to cause cancer, birth defects, and/or developmental or reproductive harm. Discharges of polluted storm water to the Receiving Water pose carcinogenic and reproductive toxicity threats to the public and adversely affect the aquatic environment.

II. THE FACILITY AND ASSOCIATED DISCHARGES OF POLLUTANTS

A. The Facility Site Description and Industrial Activities.

The Facility is located at 14618 Arrow Highway in Baldwin Park, California, and is bordered by Arrow Highway to the North, Bleecker Street to the East, with other businesses to the West up to Maine Avenue. Joanbridge Street runs east-west between Bleecker Street and Maine Avenue and the Facility operates both to the North and South of Joanbridge Street. *See* Site Map, submitted with 2015 SWPPP, attached hereto as Exhibit 1. Information available to Waterkeeper indicates that the Facility is approximately 4.5 acres in size and is engaged primarily in collecting, handling, sorting, processing and transporting of paper, containers, and metal. *See* 2015 SWPPP, § 3.0. Waste materials that are received at the Facility are sorted, stored in containers and transported to the baler, and baled and loose material is then shipped off site for processing or disposal. *See id* at §§ 4.1-4.2. Information available to Waterkeeper indicates that the Facility is 95% impervious surface. *See id.* at § 4.4.

The industrial activities and pollutant sources at the Facility include but are not limited to the Steel Processing Area, the Maintenance Shop, the Redemption Area, the Material Bailing area, curbside sorting area, the Warehouse, the Loading Dock, and other areas where loading, unloading and/or sorting of waste occurs. *See* 2015 SWPPP at §§ 4.1-4.2. Heavy machinery such as forklifts are used outdoors, material tracking occurs throughout the Facility, and truck track off across Joanbridge Street and at the egress and entrance points at the Facility occurs as well.

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[4] High concentrations of TSS degrade optical water quality by reducing water clarity and decreasing light available to support photosynthesis. TSS has been shown to alter predator prey relationships (for example, turbid water may make it difficult for fish to hunt prey). Deposited solids alter fish habitat, aquatic plants, and benthic organisms. TSS can also be harmful to aquatic life because numerous pollutants, including metals and polycyclic aromatic hydrocarbons, are absorbed onto TSS. Thus, higher concentrations of TSS results in higher concentrations of toxins associated with those sediments. Inorganic sediments, including settleable matter and suspended solids, have been shown to negatively impact species richness, diversity, and total biomass of filter feeding aquatic organisms on bottom surfaces.

These activities and areas are all significant pollutant sources at the Facility.

B. Facility Pollutants and BMPs.

The pollutants associated with operations at the Facility include, but are not limited to: pH-affecting substances; metals, such as iron, aluminum, lead, zinc, cadmium, chromium, copper, arsenic, and mercury; COD; BOD; TSS; benzene; gasoline and diesel fuels; fuel additives; coolants; antifreeze; O&G; trash and debris.

Information available to Waterkeeper indicates Allan Co. has not properly developed and/or implemented the necessary best management practices ("BMPs") to address pollutant sources, pollutants, and resulting contaminated discharges. BMPs are necessary at the Facility to prevent the exposure of pollutants to precipitation and the subsequent discharge of polluted storm water from the Facility. Due to the lack of BMPs and/or the inadequacy of the BMPs that are utilized at the Facility, industrial activities and pollutants are exposed to precipitation during rain events, and this polluted storm water discharges into the storm drain system, which discharges into the Receiving Water. For example, although Allan Co. states that it installed a Stormwater RX treatment system in 2010, elevated levels of pollutants continue to be present in storm water discharged from the Facility. Moreover, the majority of the BMPs listed for the numerous toxic pollutants present at the Facility include only general good housekeeping measures such as inspections and visual observations. *See* 2015 SWPPP, § 6. Despite these minimal BMPs, and the sampling data demonstrating pollutants are in storm water discharges at elevated levels, Allan Co. claims that additional actions and BMPs are not required. *See e.g.* Allan Co's Annual Reports for the Facility.

In addition, the SWPPP fails to provide for a clear schedule for BMP implementation that is necessary for adequate storm water pollution control. For example, the 2015 SWPPP states that the M30 industrial cleaner is used "at the end of the day" as a site specific BMP for the buyback, unloading and receiving areas at the Facility, but in that same section of the SWPPP the frequency of this BMP for this area is listed as "at least two times a week; prior to a storm event." 2015 SWPPP § 6.1. In the SWPPP BMP Table, the M30 cleaner is scheduled to be used on the entire Facility only once a month (*see* § 10, BMP Table), and then includes a "Note" under the BMP Table that the M30 cleaner is used "[b]efore a potential storm event." *Id.* at § 10. Thus, even though the frequency of the M30 sweeper efficiency was noted in the 2010/2011 Annual Report, there still is no clear direction on the frequency of this BMP.

Finally, the 2015 Permit establishes numeric action levels ("NALs"), which are pollutant levels in discharges that, if exceeded, indicate that a facility's BMPs are inadequately developed or implemented, or both, and must be improved. 2015 Permit, Fact Sheet at 55-60. The sampling results from discharges from the Allan Co. exceed the NALs for aluminum, copper, zinc, and iron. These exceedences are further evidence demonstrating that Allan Co. has and continues to fail to develop, implement and/or maintain BMPs to reduce pollutant levels in storm water discharges as required by the Storm Water Permit, and that Allan Co. has not developed or implemented, or revised, a SWPPP as required by the Storm Water Permit.

C. Facility Storm Water Flows and Discharge Locations.

Information available to Waterkeeper indicates that storm water at the Facility discharges into the municipal storm drain system, which discharges to Reach 3 of the San Gabriel River. Reach 3 of the San Gabriel River runs from Ramona Boulevard to the Whittier Narrows, then into Reach 2 of the River (Firestone to Whittier Narrows Dam) then Reach 1 below Firestone, into the San Gabriel River Estuary, and then the Pacific Ocean. The San Gabriel Watershed is the second largest watershed in Los Angeles County and is an ecologically sensitive area.

The Regional Board issued the *Water Quality Control Plan for the Coastal Watersheds of Los Angeles and Ventura County* ("Basin Plan"). The Basin Plan identifies the "Beneficial Uses" of the Receiving Water that receives polluted storm water discharges from the Facility. These Beneficial Uses include, among others: warm freshwater habitat ("WARM"), ground water recharge ("GWR"), and wildlife habitat ("WILD"), water contact recreation ("REC 1"), and non-contact water recreation ("REC 2"). *See* Basin Plan, Table 2-1. According to the 2012 303(d) List of Impaired Water Bodies, Reach 3 of the San Gabriel River is listed as impaired for pathogens, Reach 2 is listed as impaired for pathogens and metals, Reach 1 is listed as impaired for pathogens and pH, and the San Gabriel River Estuary is listed as impaired for metals and nutrients.[5] Polluted discharges from the Facility cause and/or contribute to the degradation of this already impaired surface water and aquatic dependent wildlife. For the aquatic ecosystem to regain its health, contaminated storm water discharges, including those from the Facility, must be eliminated.

The SWPPP states that storm water at the Facility is discharged from 5 outfalls. *See* 2015 SWPPP, § 3.1. Outfall 1 is located on Joanbridge Street and drains processing area at 14604 Arrow Highway, 14618 Arrow Highway and 14635 Joanbridge Street. *Id; see also* Exhibit 1, Site Map. The industrial activities reportedly draining to Outfall 1 include the sorting building, the bailing room, the loading dock, scales and buyback areas, and the steel and glass processing area. 2015 SWPPP, § 3.1. The SWPPP states that runoff enters trench drains at the Joanbridge Street driveway and is pumped to a sand filter for treatment prior to discharging from four (4) three-inch pipes in a planter retaining wall outside the site leading to Joanbridge Street. *Id.* Outfall 2 is located on Joanbridge Street just southwest of Outfall 1 and drains the activities occurring at 14620 Joanbridge including the truck/trailer parking, bins, drums and other industrial activities at the storage area, the diesel pump, the baler wire storage and partial runoff from the fueling pad. *Id.* Storm water discharged from Outfall 3, which is located on the south side of Joanbridge Street, east of Outfall 2, represents the truck parking, roll-off containers and scrap trash compactor storage at 5115 Bleecker Street. *Id.* Outfall 4 drains the truck parking area, the container repair area, the vehicle lift and scrap storage area at 5129 Bleecker Street.[6] *Id.* The SWPPP states that Outfall 5 is located "in 14620 Joanbridge St." and captures runoff from part

[5] 2012 Integrated Report – All Assessed Waters, available at: http://www.waterboards.ca.gov/water_issues/programs/tmdl/integrated2012.shtml (last accessed on July 19, 2016).

[6] The SWPPP states that Outfall 4 is "located 5129 Bleecker" Street, but the site map appears to identify Outfall 4 on Joanbridge Street. *See* 2015 SWPPP at § 3.1 and Exhibit A, Site Map.

of the fueling pad area as well as the storage at 14634 Joanbridge Street.

Information available to Waterkeeper indicates that there are additional points of storm water discharges associated with industrial activity from which Allan Co. is not but should be sampling. For example, based on information available to Waterkeeper it appears there are other discharge points at the Facility such as on Bleecker Street, out Arrow Highway to the north of the Facility and at the driveways leading to Joanbridge and/or Bleecker Streets. *See e.g.* Facility Site Map.

The Allan Co. SWPPP also identifies the metals Total Maximum Daily Load ("TMDL") for reach 3 of the San Gabriel River.[7] 2015 SWPPP § 3.0. Polluted discharges from the Facility cause and/or contribute to the degradation of this already impaired surface water and aquatic dependent wildlife. For the aquatic ecosystem to regain its health, contaminated storm water discharges, including those from the Facility, must be eliminated.

III. VIOLATIONS OF THE CLEAN WATER ACT AND THE STORM WATER PERMIT

In California, any person who discharges storm water associated with industrial activity must comply with the terms of the Storm Water Permit in order to lawfully discharge pollutants. *See* 33 U.S.C. §§ 1311(a), 1342; 40 C.F.R. § 122.26(c)(1).

The 2015 Permit superseded the 1997 Permit, except for enforcement purposes, and its terms are as stringent, or more stringent, than the terms of the 1997 Permit. *See* 2015 Permit, Findings, ¶ 6. Accordingly, Allan Co. is liable for violations of the 1997 Permit and ongoing violations of the 2015 Permit, and civil penalties and injunctive relief are available remedies. *See Illinois v. Outboard Marine, Inc.*, 680 F.2d 473, 480-81 (7th Cir. 1982) (relief granted for violations of an expired permit); *Sierra Club v. Aluminum Co. of Am.*, 585 F. Supp. 842, 853-54 (N.D.N.Y. 1984) (holding that the Clean Water Act's legislative intent and public policy favor allowing penalties for violations of an expired permit); *Pub. Interest Research Group of N.J. v. Carter-Wallace, Inc.*, 684 F. Supp. 115, 121-22 (D.N.J. 1988) ("Limitations of an expired permit, when those limitations have been transferred unchanged to the newly issued permit, may be viewed as currently in effect").

A. Discharges of Polluted Storm Water in Violation of the Storm Water Permit's Requirement to Develop and Implement BMPs That Achieve BAT/BCT.

Effluent Limitation B(3) of the 1997 Permit requires dischargers to reduce or prevent pollutants associated with industrial activity in storm water discharges through implementation of BMPs that achieve Best Available Technology Economically Achievable ("BAT") for toxic[8]

[7] The 2015 SWPPP also lists the San Gabriel River as impaired for "indicator bacteria." 2015 SWPPP § 3.0.

[8] Toxic pollutants are listed at 40 C.F.R. § 401.15 and include copper, lead, and zinc, among others.

and non-conventional pollutants and Best Conventional Pollutant Control Technology ("BCT") for conventional pollutants.[9] The 2015 Permit includes the same effluent limitation. *See* 2015 Permit, Effluent Limitation V.A.

As discussed above, information available to Waterkeeper indicates that BMPs that achieve BAT/BCT have not been developed and/or implemented at the Facility. The analytical results of storm water sampling at the Facility demonstrates that Allan Co. has failed and continues to fail to develop and/or implement BMPs that achieve BAT/BCT. EPA Benchmarks are relevant and objective standards for evaluating whether a permittee's BMPs achieve compliance with BAT/BCT standards as required by Effluent Limitation B(3) of the 1997 Permit and Effluent Limitation V.A. of the 2015 Permit.[10] For example, samples collected by Allan Co. document that storm water containing levels of aluminum, iron, copper, COD, lead and zinc well above EPA's Benchmark Levels is discharged from the Facility. *See* Exhibit 2 attached hereto which sets out a table with the results of sampling at the Facility conducted by Allan Co. compared to EPA Benchmark Levels. Information available to Waterkeeper including the significant exceedances of EPA Benchmarks demonstrates that Allan Co. has failed and continues to fail to develop and/or implement BMPs at the Facility to achieve compliance with the BAT/BCT standards.

Allan Co. has been aware that Benchmark exceedances indicate BMP and/or SWPPP improvements are required since reviewing sample results collected during the 2009/2010 rainy season. Specifically, after the Los Angeles Regional Board reviewed Allan Co's storm water sample results from February 5, 2009 it notified Allan Co. that pollutant levels in discharges exceeded the EPA Benchmark Levels and that showed "acidic discharges." *See* June 21, 2010 Regional Board correspondence to Allan Company. In the June 21, 2010 correspondence the Regional Board also notified Allan Co. that exceeding benchmark levels is "likely due to ineffective BMPs," and that if Allan Co. was implementing its BMPs identified in its SWPPP, and sample results still exceed Benchmark Levels, then "you must implement additional BMPs, and amend your SWPPP accordingly." *Id.* The Regional Board required Allan Co. to submit evidence of additional BMPs implemented at the Facility in response to the Benchmark Level exceedances, and of the required amendments to the SWPPP. *Id.*

Allan Co. responded to the Regional Board's June 21, 2010, correspondence on July 16, 2010, and reported that it made improvements to its BMPs after reviewing the February 2009 sample results and believed that "the efforts we have made (and plan to make prior to the next wet season) address concerns raised in the letter." *See* July 16, 2010 correspondence from Allan Co. to Regional Board. Allan Co. did not meet the Regional Board's July 20 deadline to provide

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[9] Conventional pollutants are listed at 40 C.F.R. § 401.16 and include biochemical oxygen demand, TSS, oil and grease, pH, and fecal coliform.

[10] *See United States Environmental Protection Agency (EPA) National Pollutant Discharge Elimination System (NPDES) Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (MSGP) Authorization to Discharge Under the National Pollutant Discharge Elimination System*, as modified effective February 26, 2009 ("Multi-Sector Permit"), Fact Sheet at 106; *see also*, 65 Federal Register 64839 (2000).

evidence of the required SWPPP amendments, rather stating that the SWPPP would be modified "once improvements are complete." *Id.* Information available to Waterkeeper indicates that Allan Co. failed to revise its SWPPP as required by the Regional Board's June 21, 2010 correspondence, and the Storm Water Permit. *See e.g.* 2015 SWPPP lists revision dates of 2004, 2006, and then not until 2012. Moreover, the improvements that were made in response to the 2009 Benchmark Level exceedances were inadequate and/or not fully implemented and maintained as sampling results demonstrate that levels of pollutants in discharges continue to exceed EPA Benchmark Levels.

Waterkeeper puts Allan Co. on notice that the Storm Water Permit Effluent Limitations are violated each time storm water discharges from the Facility. *See, e.g.*, Exhibit 3 (setting forth dates of significant rain events).[11] These discharge violations are ongoing and will continue every time Allan Co. discharges polluted storm water without developing and/or implementing BMPs that achieve compliance with the BAT/BCT standards. Waterkeeper will update the dates of violations when additional information and data become available. Each time Allan Co. discharges polluted storm water in violation of Effluent Limitation B(3) of the 1997 Permit and Effluent Limitation V.A. of the 2015 Permit is a separate and distinct violation of the Storm Water Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). Allan Co. is subject to civil penalties for all violations of the Clean Water Act occurring since July 22, 2011.

Further, Waterkeeper puts Allan Co. on notice that 2015 Permit Effluent Limitation V.A. is a separate, independent requirement with which Allan Co. must comply, and that carrying out the iterative process triggered by exceedances of the NALs listed at Table 2 of the 2015 Permit does not amount to compliance with the Permit's Effluent Limitations. While exceedances of the NALs demonstrate that a facility is among the worst performing facilities in the State, the NALs do not represent technology based criteria relevant to determining whether an industrial facility has implemented BMPs that achieve BAT/BCT.[12] Finally, even if Allan Co. submits an Exceedance Response Action Plan(s) pursuant to Section XII. of the 2015 Permit, the violations of Effluent Limitation V.A. described in this Notice Letter are ongoing.

B. Discharges of Polluted Storm Water from the Facility in Violation of Storm Water Permit Receiving Water Limitations.

Receiving Water Limitation C(2) of the 1997 Permit prohibits storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of an applicable

[11] Dates of significant rain events are measured at the Santa Fe Dam Rain Gauge. A significant rain event is defined by EPA as a rainfall event generating 0.1 inches or more of rainfall, which generally results in discharges at a typical industrial facility.

[12] "The NALs are not intended to serve as technology-based or water quality-based numeric effluent limitations. The NALs are not derived directly from either BAT/BCT requirements or receiving water objectives. NAL exceedances defined in [the 2015] Permit are not, in and of themselves, violations of [the 2015] Permit." 2015 Permit, Finding 63, p. 11. Exceedances of the NALs do, however, trigger reporting requirements. *See* 2015 Permit, Section XII.

Water Quality Standard ("WQS").[13] The 2015 Permit includes the same receiving water limitation. *See* 2015 Permit, Receiving Water Limitation VI.A. Discharges that contain pollutants in excess of an applicable WQS violate the Storm Water Permit Receiving Water Limitations. *See* 1997 Permit, Receiving Water Limitation C(2); 2015 Permit, Receiving Water Limitation VI.A.

Receiving Water Limitation C(1) of the 1997 Permit prohibits storm water discharges and authorized non-storm water discharges to surface water that adversely impact human health or the environment. The 2015 Permit includes the same Receiving Water Limitation. *See* 2015 Permit, Receiving Water Limitation VI.B. Discharges that contain pollutants in concentrations that exceed levels known to adversely impact aquatic species and the environment constitute violations of the Storm Water Permit's Receiving Water Limitations. *See* 1997 Permit, Receiving Water Limitation C(1); 2015 Permit, Receiving Water Limitation VI.B.

Storm water sampling at the Facility demonstrates that discharges contain concentrations of pollutants that cause or contribute to a violation of an applicable WQS. *See* Exhibit 2, table of sampling data compared to WQSs. Although Allan Co. fails to analyze its samples for all pollutants associated with its industrial activity, storm water samples for pollutants it does sample for are in excess of applicable WQS, such as for copper, iron and zinc. These exceedances of WQS demonstrate that Allan Co. has violated and continues to violate the Storm Water Permit Receiving Water Limitations. *See* 1997 Permit, Receiving Water Limitation C(2); 2015 Permit, Receiving Water Limitation VI.A.

Discharges of elevated concentrations of pollutants in the storm water from the Facility adversely impact human health. These harmful discharges from the Facility are violations of the Storm Water Permit Receiving Water Limitations. *See* 1997 Permit, Receiving Water Limitation C(1); 2015 Permit, Receiving Water Limitation VI.B.

Waterkeeper puts Allan Co. on notice that Storm Water Permit Receiving Water Limitations are violated each time polluted storm water discharges from the Facility. *See, e.g.*, Exhibit 2. These discharge violations are ongoing and will continue every time contaminated storm water is discharged in violation of the Storm Water Permit Receiving Water Limitations. Each time discharges of storm water from the Facility cause or contribute to a violation of an applicable WQS is a separate and distinct violation of Receiving Water Limitation C(2) of the 1997 Permit, Receiving Water Limitation VI.A. of the 2015 Permit VI.A, and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). Each time discharges from the Facility adversely

[13] The Basin Plan designates Beneficial Uses for the Receiving Water. Water quality standards are pollutant concentration levels determined by the state or federal agencies to be protective of designated Beneficial Uses. Discharges above water quality standards contribute to impairment of Receiving Water's Beneficial Uses. Applicable water quality standards include, among others, the Criteria for Priority Toxic Pollutants in the State of California, 40 C.F.R. § 131.38 ("CTR"), and water quality objectives in the Basin Plan. Industrial storm water discharges must strictly comply with water quality standards, including those criteria listed in the applicable basin plan. *See Defenders of Wildlife v. Browner*, 191 F.3d 1159, 1166-67 (9th Cir. 1999).

impact human health or the environment is a separate and distinct violation of Receiving Water Limitation C(1) of the 1997 Permit, Receiving Water Limitation VI.B. of the 2015 Permit, and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). Waterkeeper will update the dates of violation when additional information and data becomes available. Allan Co. is subject to civil penalties for all violations of the Clean Water Act occurring since July 22, 2011.

Further, Waterkeeper puts Allan Co. on notice that 2015 Permit Receiving Water Limitations are separate, independent requirements with which Allan Co. must comply, and that carrying out the iterative process triggered by exceedances of the NALs listed at Table 2 of the 2015 Permit does not amount to compliance with the Receiving Water Limitations. While exceedances of the NALs demonstrate that a facility is among the worst performing facilities in the State, the NALs do not represent water quality based criteria relevant to determining whether an industrial facility has caused or contributed to an exceedance of a water quality standard.[14] Finally, even if Allan Co. submits an Exceedance Response Action Plan(s) pursuant to Section XII. of the 2015 Permit, the violations of the Receiving Water Limitations described in this Notice Letter are ongoing.

C. Failure to Develop, Implement, and/or Revise an Adequate Storm Water Pollution Prevention Plan.

The Storm Water Permit requires permittees to develop and implement a Storm Water Pollution Prevention Plan prior to conducting, and in order to continue, industrial activities. The specific SWPPP requirements of the 1997 Permit and the 2015 Permit are set out below.

1. 1997 SWPPP Requirements.

Section A(1) and Provision E(2) of the 1997 Permit require dischargers to have developed and implemented a SWPPP by October 1, 1992, or prior to beginning industrial activities, that meets all of the requirements of the Storm Water Permit. The objectives of the 1997 Permit SWPPP requirement are to identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm water discharges from the Facility, and to implement site-specific BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges. *See* 1997 Permit, Section A(2). These BMPs must achieve compliance with the Storm Water Permit's Effluent Limitations and Receiving Water Limitations.

To ensure compliance with the Storm Water Permit, the SWPPP must be evaluated on an annual basis pursuant to the requirements of Section A(9) of the 1997 Permit, and must be revised as necessary to ensure compliance with the Storm Water Permit. 1997 Permit, Sections

[14] "The NALs are not intended to serve as technology-based or water quality-based numeric effluent limitations. The NALs are not derived directly from either BAT/BCT requirements or receiving water objectives. NAL exceedances defined in [the 2015] Permit are not, in and of themselves, violations of [the 2015] Permit." 2015 Permit, Finding 63, p. 11. Exceedances of the NALs do, however, trigger reporting requirements. *See* 2015 Permit, Section XII.

A(9) and (10). Sections A(3) – A(10) of the 1997 Permit set forth the requirements for a SWPPP. Among other requirements, the SWPPP must include: a site map showing the facility boundaries, storm water drainage areas with flow patterns, nearby water bodies, the location of the storm water collection, conveyance and discharge system, structural control measures, areas of actual and potential pollutant contact, areas of industrial activity, and other features of the facility and its industrial activities (*see* 1997 Permit, Section A(4)); a list of significant materials handled and stored at the site (*see* 1997 Permit, Section A(5)); a description of potential pollutant sources, including industrial processes, material handling and storage areas, dust and particulate generating activities, significant spills and leaks, non-storm water discharges and their sources, and locations where soil erosion may occur (*see* 1997 Permit, Section A(6)).

Sections A(7) and A(8) of the 1997 Permit require an assessment of potential pollutant sources at the facility and a description of the BMPs to be implemented at the facility that will reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges, including structural BMPs where non-structural BMPs are not effective.

2. 2015 SWPPP Requirements.

As with the SWPPP requirements of the 1997 Permit, Sections X(A) - (H) of the 2015 Permit require dischargers to have developed and implemented a SWPPP that meets all of the requirements of the 2015 Permit. *See also* 2015 Permit, Appendix 1. The objective of the SWPPP requirements are still to identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm water discharges, and to implement site-specific BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges. *See* 2015 Permit, Section X(C).

The SWPPP must include, among other things and consistent with the 1997 Permit, a narrative description and summary of all industrial activity, potential sources of pollutants, and potential pollutants; a site map indicating the storm water conveyance system, associated points of discharge, direction of flow, identification of areas of soil erosion and impervious areas, areas of actual and potential pollutant contact, including the extent of pollution-generating activities, nearby water bodies, and pollutants control measures. *See* 2015 Permit, Section X(A)-(H). The SWPPP must also contain a description of the BMPs developed and implemented to reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges necessary to comply with the Storm Water Permit; the identification and elimination of non-storm water discharges; the location where significant materials are being shipped, stored, received, and handled, as well as the typical quantities of such materials and the frequency with which they are handled; a description of dust and particulate-generating activities, and; the identification of individuals and their current responsibilities for developing and implementing the SWPPP. *Id.*

Further, permitees must establish individuals who will implement the requirements of the permit including conducting the required visual observations, collection of storm water samples, and otherwise preparing for storm events as set forth in each facility SWPPP. *See* 2015 Permit, Section X(D)(1). For example, the SWPPP must include the identity and position of individuals

who will carry out the permit requirements, including specifically the responsibilities, duties, activities each member is in charge of. *Id.* The SWPPP must also contain "procedures to identify alternate team members to implement the SWPPP and conduct required monitoring when the regularly assigned team members are temporarily unavailable (due to vacation, illness, out of town business, or other absence." *Id.* at Section X(D)(a)(c).

Finally, the 2015 Permit requires the discharger to evaluate the SWPPP on an annual basis and revise it as necessary to ensure compliance with the Storm Water Permit. 2015 Permit, Section X(A)-(B). Like the 1997 Permit, the 2015 Permit also requires that the discharger conduct an annual comprehensive site compliance evaluation that includes a review of all visual observation records, inspection reports and sampling and analysis results, a visual inspection of all potential pollutant sources for evidence of, or the potential for, pollutants entering the drainage system, a review and evaluation of all BMPs to determine whether the BMPs are adequate, properly implemented and maintained, or whether additional BMPs are needed, and a visual inspection of equipment needed to implement the SWPPP. 2015 Permit, Section X(B) and Section XV.

3. Allan Co. Has Violated and Continues to Violate the Storm Water Permit's SWPPP Requirements.

Information available to Waterkeeper indicates that Allan Co. has been and continues to conduct operations at the Facility with an inadequately developed and/or implemented SWPPP. For example, in violation of Section A(4) of the 1997 Permit and Section X(E)(3) of the 2015 Permit, the site map fails to, among other things, identify all areas of industrial activity, all discharge locations, identification of impervious areas and areas of soil erosion, and areas where materials are directly exposed to precipitation. In addition, the site map fails to list all structural control measures, such as the sand filter at Outfall 1 that is identified in the SWPPP. *See* 2015 SWPPP at §3.1.

The SWPPP also fails to include an adequate assessment of potential pollutant sources or BMPs that achieve the BAT/BCT standards, as required by Section A(6) of the 1997 Permit and Sections X(G) and X(H) of the 2015 Permit. The Allan Co. SWPPP also fails to identify all pollutants present at the Facility, or potential pollutants based on waste accepted at the Facility.

Information available to Waterkeeper indicates that Allan Co. also fails to address all areas of industrial activity and/or all areas of pollutant sources and corresponding pollutants in the SWPPP. In addition, Allan Co. has not adequately revised the Facility SWPPP, as required by Section A(7) of the 1997 Permit and Section X(D)(2)(a) of the 2015 Permit. Allan Co's failure to develop, implement and/or maintain BMPs to reduce pollutant levels in storm water discharges is a violation of the Storm Water Permit.

Allan Co. has failed and continues to fail to adequately develop, implement, and/or revise a SWPPP, in violation of SWPPP requirements of the Storm Water Permit. Every day the Facility operates with an inadequately developed, implemented, and/or properly revised SWPPP is a separate and distinct violation of the Storm Water Permit and the Clean Water Act. Allan Co.

has been in daily and continuous violation of the Storm Water Permit's SWPPP requirements since at least July 22, 2011. These violations are ongoing, and Waterkeeper will include additional violations when information becomes available. Allan Co. is subject to civil penalties for all violations of the Clean Water Act occurring since July 22, 2011.

D. Failure to Develop, Implement, and/or Revise an Adequate Monitoring and Reporting Program.

The Storm Water Permit requires permittees to develop and implement a storm water monitoring and reporting program ("M&RP") prior to conducting, and in order to continue, industrial activities. The specific M&RP requirements of the 1997 Permit and the 2015 Permit are set out below.

1. 1997 Permit Requirements.

Section B(1) and Provision E(3) of the 1997 Permit require facility operators to develop and implement an adequate M&RP by October 1, 1992, or prior to the commencement of industrial activities at a facility, that meets all of the requirements of the Storm Water Permit. The primary objective of the M&RP is to detect and measure the concentrations of pollutants in a facility's discharge to ensure compliance with the Storm Water Permit's Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations. *See* 1997 Permit, Section B(2).

The M&RP must therefore ensure that BMPs are effectively reducing and/or eliminating pollutants at the facility, and must be evaluated and revised whenever appropriate to ensure compliance with the Storm Water Permit. *Id.* Sections B(3) – B(16) of the 1997 Permit set forth the M&RP requirements. Specifically, Section B(3) requires dischargers to conduct quarterly visual observations of all drainage areas within their facility for the presence of authorized and unauthorized non-storm water discharges. Section B(4) requires dischargers to conduct visual observations of storm water discharges from one storm event per month during the Wet Season. Sections B(3) and B(4) further require dischargers to document the presence of any floating or suspended material, oil and grease, discolorations, turbidity, odor, and the source of any pollutants. Dischargers must maintain records of observations, observation dates, locations observed, and responses taken to eliminate unauthorized non-storm water discharges and to reduce or prevent pollutants from contacting non-storm water and storm water discharges. *See* 1997 Permit, Sections B(3) and B(4). Dischargers must revise the SWPPP in response to these observations to ensure that BMPs are effectively reducing and/or eliminating pollutants at the facility. *Id.*, Section B(4). Sections B(5) and B(7) of the 1997 Permit require dischargers to visually observe and collect samples of storm water from all locations where storm water is discharged.

During its coverage under the 1997 Permit, the Facility was part of the Paper, Glass, Plastic Group Monitoring Program, and thus Allan Co. must comply with the group monitoring provisions set forth in Section B(15) of the 1997 Permit. Under Section B(15) of the 1997 Permit, the Facility Owners and/or Operators must collect at least two (2) samples from each discharge point at the Facility over a five (5) year period. *See* 1997 Permit, Sections B(5), B(7),

and B(15). Storm water samples must be analyzed for TSS, pH, specific conductance ("SC"), total organic carbon or O&G, and other pollutants that are likely to be present in the facility's discharges in significant quantities. *See* Storm Water Permit, Section B(5)(c). The 1997 Permit requires facilities classified as SIC code 5093, such as the Facility, to also analyze storm water samples for iron, COD, aluminum, lead, copper and zinc. *Id.*; *see also* 1997 Permit, Table D, Sector N.

Section B(7)(d) of the 1997 Permit allows for the reduction of sampling locations in very limited circumstances when "industrial activities and BMPs within two or more drainage areas are substantially identical." If a discharger seeks to reduce sampling locations, the "[f]acility operators must document such a determination in the annual report." *Id.*

2. 2015 Permit Requirements.

As with the 1997 M&RP requirements, Sections X(I) and XI(A)-XI(D) of the 2015 Permit require facility operators to develop and implement an adequate M&RP that meets all of the requirements of the 2015 Permit. The objective of the M&RP is still to detect and measure the concentrations of pollutants in a facility's discharge, and to ensure compliance with the 2015 Permit's Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations. *See* 2015 Permit, Section XI. An adequate M&RP ensures that BMPs are effectively reducing and/or eliminating pollutants at the facility, and is evaluated and revised whenever appropriate to ensure compliance with the Storm Water Permit. *See id.*

As an *increase* in observation frequency over the 1997 Permit, Section XI(A) of the 2015 Permit requires all visual observations at least once each month, and at the same time sampling occurs at a discharge location. Observations must document the presence of any floating and suspended material, O&G, discolorations, turbidity, odor and the source of any pollutants. 2015 Permit, Section XI(A)(2). Dischargers must document and maintain records of observations, observation dates, locations observed, and responses taken to reduce or prevent pollutants in storm water discharges. 2015 Permit, Section XI(A)(3).

Section XI(B)(1-5) of the 2015 Permit requires permittees to collect storm water discharge samples from a qualifying storm event[15] as follows: 1) from each discharge location, 2) from two storm events within the first half of each reporting year[16] (July 1 to December 31), 3) from two storm events within the second half of each reporting year (January 1 to June 30), and 4) within four hours of the start of a discharge, or the start of facility operations if the qualifying storm event occurs within the previous 12-hour period. Section XI(B)(11) of the 2015 Permit, among other requirements, provides that permittees must submit all sampling and analytical results for all samples via SMARTS within 30 days of obtaining results for each sampling event. Facilities that are in a Compliance Group, must make specific certifications on

[15] The 2015 Permit defines a qualifying storm event as one that produces a discharge for at least one drainage area, and is preceded by 48-hours with no discharge from any drainage areas. 2015 Permit, Section XI(B)(1).

[16] A reporting year is defined as July 1 through June 30. 2015 Permit, Findings, ¶ 62(b).

SMARTS (*see id.* at XIV), and must collect and analyze storm water samples from one (1) qualifying storm event within the first half of the reporting year, and one (1) qualifying storm event within the second half of the reporting year. *Id.* at XI(B)(3).

The parameters to be analyzed are also consistent with the 1997 Permit. Specifically, Section XI(B)(6)(a)-(b) of the 2015 Permit requires permitees to analyze samples for TSS, oil & grease, and pH. Section XI(B)(6)(c) of the 2015 Permit requires permitees to analyze samples for pollutants associated with all industrial operations, which for the Facility would include, among others, copper. Section XI(B)(6)(d) requires additional parameter analysis based on a facility's SIC code, which for the Facility includes, iron, lead, zinc, COD, and aluminum. *See* 2015 Permit, Table 1. Finally, Section XI(B)(6) of the 2015 Permit also requires dischargers to analyze storm water samples for additional applicable industrial parameters related to receiving waters with 303(d) listed impairments, or approved Total Maximum Daily Loads.

Finally, as in the 1997 Permit, the 2015 Permit requires storm water samples be collected from all discharge locations. 2015 Permit, Section XI(B)(5). The requirements to allow for reduced sample collection locations were strengthened in the 2015 Permit and must provide a Representative Sampling Reduction Justification, revise the M&RP, and provide both to the Regional Board via SMARTS. *See* 2015 Permit, Section XI(C)(4).

3. Allan Co. Has Violated and Continue to Violate the Storm Water Permit M&RP Requirements.

Allan Co. has been and continues to conduct operations at the Facility with an inadequately developed, implemented, and/or revised M&RP. For example, Allan Co. has failed and continues to fail to conduct all required quarterly and/or monthly visual observations. *See* 1997 Permit, Section B(3); *see also* 2015 Permit, Section XI(A)(1). Additionally, Allan Co. has failed to provide the records required by the Storm Water Permit for the visual observations that were conducted in violation of Section B(4) of the 1997 Permit and Section XI(A)(3) of the 2015 Permit.

Allan Co. also fails to collect storm water samples as required by the Storm Water Permit. For example, Allan Co. consistently fails to collect storm water samples from all required sample locations, does not collect samples from required number of storm events, and/or from the first storm event of the year, or perform the sample collection within the required time frame. *See* Allan Co's Annual Reports for the Facility; *see also* 2015 SWPPP, § 9.[17]

Allan Co. also fails to analyze samples for all parameters required by the Storm Water Permit. Specifically, Allan Co. must analyze samples for those specifically identified in the Storm Water Permit, but also for parameters based on industrial operations or if there is an impairment in the receiving water. Although section 3 of the 2015 SWPPP lists the Receiving Water as impaired for indicator bacteria, the M&RP does not identify the impairment or the required parameter for analysis. *See* 2015 SWPPP, § 9.4.3; *see also* 2015 Permit, Fact Sheet,

[17] The M&RP is set forth at Sections 9.1-9.9 of the 2015 SWPPP.

Section D(7). The M&RP also improperly lists "N/A" when identifying additional constituents based on a pollutant source assessment, and fails to list copper as a pollutant for analysis, even though Allan Co. routinely analyses for that pollutant, and results demonstrate it is a pollutant of concern at the Facility. *See* 2015 SWPPP, § 9.4.3; *see also* 2015 Permit, Fact Sheet, Section J(3)(b)(iii) ("This General Permit requires Dischargers to control its discharge as necessary to meet the receiving water limitations, and to select additional monitoring parameters that are representative of industrial materials handled at the facility (regardless of the degree of storm water contact or relative mobility) that may be related to pollutants causing a water body to be impaired." Analyzing storm water samples for all pollutants associated with industrial activities is necessary to determine whether one or more BMPs implemented at the Facility is effective in reducing all pollutants in the discharge. *See* 2015 Permit, Section XI(B)(6)(c).

Finally, the M&RP allows for holding times for Allan Co. to deliver its storm water samples it has collected to the lab that are inconsistent with the requirements of the 2015 Permit. For example, although the M&RP recites the 2015 Permit's 48-hour holding time guidance, the M&RP allows for 180 days holding time for metal analysis of aluminum, zinc, lead, copper and iron. *See* 2015 SWPPP, § 9.4.4 and § 9.4.5. The M&RP fails to provide the implementation measures necessary to comply with the sampling and monitoring requirements of the 2015 Permit, such as those found in the Sample Collection and Handling Instruction. *See* 2015 Permit, Section XI, and Attachment H.

Allan Co's failure to conduct sampling and monitoring as required by the Storm Water Permit demonstrates that it has failed to develop, implement, and/or revise an M&RP that complies with the requirements of Storm Water Permit. Every day that Allan Co. conducts operations in violation of the specific monitoring requirements of the Storm Water Permit, or with an inadequately developed and/or implemented M&RP, is a separate and distinct violation of the Storm Water Permit and the Clean Water Act. Allan Co. has been in daily and continuous violation of the Storm Water Permit's M&RP requirements every day since at least July 22, 2011. These violations are ongoing, and Waterkeeper will include additional violations when information becomes available. Allan Co. is subject to civil penalties for all violations of the Clean Water Act occurring since July 22, 2011.

E. Failure to Comply with the Storm Water Permit's Reporting Requirements.

Section B(14) of the 1997 Permit requires a permittee to submit an Annual Report to the Regional Board by July 1 of each year. Section B(14) requires that the Annual Report include a summary of visual observations and sampling results, an evaluation of the visual observation and sampling results, the laboratory reports of sample analysis, the annual comprehensive site compliance evaluation report, an explanation of why a permittee did not implement any activities required, and other information specified in Section B(13). The 2015 Permit includes the same annual reporting requirement. *See* 2015 Permit, Section XVI.

Allan Co. has failed and continues to fail to submit Annual Reports that comply with these reporting requirements. For example, in its Annual Reports Allan Co. consistently certifies that: (1) a complete Annual Comprehensive Site Compliance Evaluation ("ACSCE") was done

pursuant to Section A(9) of the Storm Water Permit; (2) the SWPPP's BMPs address existing potential pollutant sources and additional BMPs are not needed; and (3) the SWPPP complies with the Storm Water Permit, or will otherwise be revised to achieve compliance. However, information available to Waterkeeper indicates that these certifications are erroneous. For example, sampling data demonstrating elevated levels of pollutants in discharges has been ongoing, and Allan Co. was even notified of the inadequacy of the BMPs in 2010 yet consistently reports that no additional BMPs are needed and that the Facility is in compliance. And when pollutants are observed during required visual observations, and additional BMPs are noted as being needed, Allan Co. still certifies in its ACSCE that it is in full compliance and no additional BMPs are required. *See e.g.* 2013/2014 and 2014/2015 Annual Reports. Finally, since the Facility's SWPPP and M&RP do not include many elements required by the Storm Water Permit, it is erroneous to certify that these plans comply with the Storm Water Permit.

In addition, the facility operator must report any noncompliance with the Storm Water Permit at the time that the Annual Report is submitted, including 1) a description of the noncompliance and its cause, 2) the period of noncompliance, 3) if the noncompliance has not been corrected, the anticipated time it is expected to continue, and 4) steps taken or planned to reduce and prevent recurrence of the noncompliance. Storm Water Permit, Section C(11)(d). Allan Co. has not reported non-compliance as required.

Information available to Waterkeeper indicates that Allan Co. has submitted incomplete and/or incorrect Annual Reports that fail to comply with the Storm Water Permit. As such, Allan Co. is in daily violation of the Storm Water Permit. Every day Allan Co. conducts operations at the Facility without reporting as required by the Storm Water Permit is a separate and distinct violation of the Storm Water Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. §1311(a). Allan Co. has been in daily and continuous violation of the Storm Water Permit's reporting requirements every day since at least July 22, 2011. These violations are ongoing, the 2015 Permit's annual reporting requirements are as stringent as the 1997 Permit requirements, and Waterkeeper will include additional violations when information becomes available, including specifically violations of the 2015 Permit reporting requirements (*see* 2015 Permit, Sections XII. and XVI.). Allan Co. is subject to civil penalties for all violations of the Clean Water Act occurring since July 22, 2011.

IV. RELIEF SOUGHT FOR VIOLATIONS OF THE CLEAN WATER ACT

Pursuant to Section 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d), and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. § 19.4, each separate violation of the Clean Water Act subjects the violator to a penalty for all violations occurring during the period commencing five years prior to the date of the Notice Letter. These provisions of law authorize civil penalties of up to $37,500.00 per day per violation for all Clean Water Act violations after January 12, 2009.

In addition to civil penalties, Waterkeeper will seek injunctive relief preventing further violations of the Clean Water Act pursuant to Sections 505(a) and (d), 33 U.S.C. § 1365(a) and (d), declaratory relief, and such other relief as permitted by law.

Last, pursuant to Section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), Waterkeeper will seek to recover its costs, including attorneys' and experts' fees, associated with this enforcement action.

V. CONCLUSION

Waterkeeper is willing to discuss effective remedies for the violations described in this Notice Letter. However, upon expiration of the 60-day notice period, Waterkeeper intends to file a citizen suit under Section 505(a) of the Clean Water Act for Allan Co's violations of the Storm Water Permit.

If you wish to pursue settlement discussions please contact Waterkeeper's legal counsel:

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Sincerely,

Bruce Reznik
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Exhibit 1
Sample Results for Allan Co.
Baldwin Park

Sample Location (14618 Arrow facility)	Date/Time of Sample Collection	Parameter	Result	Units	Benchmark	Magnitude of Exceedance	CTR	Magnitude of Exceedance
2015/2016 Wet Season								
Outfall 1	1/5/16 0:00	Aluminum, Total	1.2	mg/L	0.75	**1.6**	None	
Outfall 1	1/5/16 0:00	Chemical Oxygen Demand (COD)	160	mg/L	120	**1.33**	None	
Outfall 1	1/5/16 0:00	Copper, Total	0.066	mg/L	0.0123	**5.37**	0.013	**5.08**
Outfall 1	1/5/16 0:00	Iron, Total	2.5	mg/L	1	**2.5**	None	
Outfall 1	1/5/16 0:00	Lead, Total	0.044	mg/L	0.069		0.065	
Outfall 1	1/5/16 0:00	Oil and Grease	8.8	mg/L	15		None	
Outfall 1	1/5/16 0:00	Total Suspended Solids (TSS)	61	mg/L	100		None	
Outfall 1	1/5/16 0:00	Zinc, Total	0.76	mg/L	0.11	**6.91**	0.12	**6.33**
Outfall 1	1/5/16 0:00	pH	7	SU	6.0-9.0		None	
Outfall 2	1/5/16 0:00	Chemical Oxygen Demand (COD)	40	mg/L	120		None	
Outfall 2	1/5/16 0:00	Copper, Total	0.036	mg/L	0.0123	**2.93**	0.013	**2.77**
Outfall 2	1/5/16 0:00	Iron, Total	2.9	mg/L	1	**2.9**	None	
Outfall 2	1/5/16 0:00	Lead, Total	0.037	mg/L	0.069		0.065	
Outfall 2	1/5/16 0:00	Oil and Grease	ND	mg/L	15		None	
Outfall 2	1/5/16 0:00	Total Suspended Solids (TSS)	97	mg/L	100	**0**	None	
Outfall 2	1/5/16 0:00	Zinc, Total	0.3	mg/L	0.11	**2.73**	0.12	**2.50**
Outfall 2	1/5/16 0:00	pH	7	SU	6.0-9.0		None	
Outfall 3	1/5/16 0:00	Aluminum, Total	0.39	mg/L	0.75		None	
Outfall 3	1/5/16 0:00	Chemical Oxygen Demand (COD)	14	mg/L	120		None	
Outfall 3	1/5/16 0:00	Copper, Total	0.0098	mg/L	0.0123		0.013	
Outfall 3	1/5/16 0:00	Iron, Total	0.65	mg/L	1		None	
Outfall 3	1/5/16 0:00	Lead, Total	0.0051	mg/L	0.069		0.065	
Outfall 3	1/5/16 0:00	Oil and Grease	ND	mg/L	15		None	
Outfall 3	1/5/16 0:00	Total Suspended Solids (TSS)	23	mg/L	100		None	
Outfall 3	1/5/16 0:00	Zinc, Total	0.096	mg/L	0.11		0.12	
Outfall 3	1/5/16 0:00	pH	7	SU	6.0-9.0		None	
Outfall 4	1/5/16 0:00	Aluminum, Total	3.8	mg/L	0.75	**5.07**	None	
Outfall 4	1/5/16 0:00	Chemical Oxygen Demand (COD)	38	mg/L	120		None	
Outfall 4	1/5/16 0:00	Copper, Total	0.11	mg/L	0.0123	**8.94**	0.013	**8.46**

Exhibit 1
Sample Results for Allan Co.
Baldwin Park

Sample Location (14618 Arrow facility)	Date/Time of Sample Collection	Parameter	Result	Units	Benchmark	Magnitude of Exceedance	CTR	Magnitude of Exceedance
Outfall 4	1/5/16 0:00	Iron, Total	6.4	mg/L	1	**6.4**	None	
Outfall 4	1/5/16 0:00	Lead, Total	0.075	mg/L	0.069	**1.09**	0.065	
Outfall 4	1/5/16 0:00	Oil and Grease	2.3	mg/L	15		None	
Outfall 4	1/5/16 0:00	Total Suspended Solids (TSS)	180	mg/L	100	**1.8**	None	
Outfall 4	1/5/16 0:00	Zinc, Total	0.79	mg/L	0.11	**7.18**	0.12	**6.58**
Outfall 4	1/5/16 0:00	pH	7	SU	6.0-9.0		None	
Outfall 5	1/5/16 0:00	Aluminum, Total	0.92	mg/L	0.75	**1.23**	None	
Outfall 5	1/5/16 0:00	Chemical Oxygen Demand (COD)	12	mg/L	120		None	
Outfall 5	1/5/16 0:00	Copper, Total	0.024	mg/L	0.0123	**1.95**	0.013	**1.85**
Outfall 5	1/5/16 0:00	Iron, Total	1.5	mg/L	1	**1.5**	None	
Outfall 5	1/5/16 0:00	Lead, Total	0.013	mg/L	0.069		0.065	
Outfall 5	1/5/16 0:00	Oil and Grease	ND	mg/L	15		None	
Outfall 5	1/5/16 0:00	Total Suspended Solids (TSS)	25	mg/L	100		None	
Outfall 5	1/5/16 0:00	Zinc, Total	0.22	mg/L	0.11	**2.00**	0.12	**1.83**
Outfall 5	1/5/16 0:00	pH	7	SU	6.0-9.0		None	
Outfall 1	2/17/2016 21:30:00 AM	Aluminum, Total	1.9	mg/L	0.75	**2.53**	None	
Outfall 1	2/17/2016 21:30:00 AM	Chemical Oxygen Demand (COD)	210	mg/L	120	**1.75**	None	
Outfall 1	2/17/2016 21:30:00 AM	Copper, Total	0.094	mg/L	0.0123	**7.64**	0.013	**7.23**
Outfall 1	2/17/2016 21:30:00 AM	Iron, Total	4.2	mg/L	1	**4.2**	None	
Outfall 1	2/17/2016 21:30:00 AM	Lead, Total	0.062	mg/L	0.069		0.065	
Outfall 1	2/17/2016 21:30:00 AM	Oil and Grease	3.6	mg/L	15		None	
Outfall 1	2/17/2016 21:30:00 AM	Total Suspended Solids (TSS)	150	mg/L	100		None	
Outfall 1	2/17/2016 21:30:00 AM	Zinc, Total	0.81	mg/L	0.11	**7.36**	0.12	**6.75**
Outfall 1	2/17/2016 21:30:00 AM	pH		SU	6.0-9.0		None	
Outfall 2	2/17/2016 21:30:00 AM	Aluminum, Total	0.28	mg/L	0.75		None	
Outfall 2	2/17/2016 21:30:00 AM	Chemical Oxygen Demand (COD)	47	mg/L	120		None	
Outfall 2	2/17/2016 21:30:00 AM	Copper, Total	0.031	mg/L	0.0123	**2.52**	0.013	**2.38**
Outfall 2	2/17/2016 21:30:00 AM	Iron, Total	0.54	mg/L	1		None	
Outfall 2	2/17/2016 21:30:00 AM	Lead, Total	0.012	mg/L	0.069		0.065	
Outfall 2	2/17/2016 21:30:00 AM	Oil and Grease	3.9	mg/L	15		None	
Outfall 2	2/17/2016 21:30:00 AM	Total Suspended Solids (TSS)	13	mg/L	100		None	

Exhibit 1
Sample Results for Allan Co.
Baldwin Park

Sample Location (14618 Arrow facility)	Date/Time of Sample Collection	Parameter	Result	Units	Benchmark	Magnitude of Exceedance	CTR	Magnitude of Exceedance
Outfall 2	2/17/2016 21:30:00 AM	Zinc, Total	1.5	mg/L	0.11	**13.64**	0.12	**12.50**
Outfall 2	2/17/2016 21:30:00 AM	pH		SU	6.0-9.0		None	
Outfall 3	2/17/2016 21:30:00 AM	Aluminum, Total	0.36	mg/L	0.75		None	
Outfall 3	2/17/2016 21:30:00 AM	Chemical Oxygen Demand (COD)	33	mg/L	120		None	
Outfall 3	2/17/2016 21:30:00 AM	Copper, Total	0.0084	mg/L	0.0123		0.013	
Outfall 3	2/17/2016 21:30:00 AM	Iron, Total	0.48	mg/L	1		None	
Outfall 3	2/17/2016 21:30:00 AM	Lead, Total	0.0047	mg/L	0.069		0.065	
Outfall 3	2/17/2016 21:30:00 AM	Oil and Grease	ND	mg/L	15		None	
Outfall 3	2/17/2016 21:30:00 AM	Total Suspended Solids (TSS)	19	mg/L	100		None	
Outfall 3	2/17/2016 21:30:00 AM	Zinc, Total	0.083	mg/L	0.11		0.12	
Outfall 3	2/17/2016 21:30:00 AM	pH		SU	6.0-9.0		None	
Outfall 4	2/17/2016 21:30:00 AM	Aluminum, Total	0.33	mg/L	0.75		None	
Outfall 4	2/17/2016 21:30:00 AM	Chemical Oxygen Demand (COD)	32	mg/L	120		None	
Outfall 4	2/17/2016 21:30:00 AM	Copper, Total	0.019	mg/L	0.0123	**1.54**	0.013	**1.46**
Outfall 4	2/17/2016 21:30:00 AM	Iron, Total	0.61	mg/L	1		None	
Outfall 4	2/17/2016 21:30:00 AM	Lead, Total	0.0073	mg/L	0.069		0.065	
Outfall 4	2/17/2016 21:30:00 AM	Oil and Grease	12	mg/L	15		None	
Outfall 4	2/17/2016 21:30:00 AM	Total Suspended Solids (TSS)	18	mg/L	100		None	
Outfall 4	2/17/2016 21:30:00 AM	Zinc, Total	0.26	mg/L	0.11	**2.36**	0.12	**2.17**
Outfall 4	2/17/2016 21:30:00 AM	pH		SU	6.0-9.0		None	
Outfall 5	2/17/2016 21:30:00 AM	Aluminum, Total	1.6	mg/L	0.75	**2.13**	None	
Outfall 5	2/17/2016 21:30:00 AM	Chemical Oxygen Demand (COD)	36	mg/L	120		None	
Outfall 5	2/17/2016 21:30:00 AM	Copper, Total	0.06	mg/L	0.0123	**4.88**	0.013	**4.62**
Outfall 5	2/17/2016 21:30:00 AM	Iron, Total	3.7	mg/L	1	**3.7**	None	
Outfall 5	2/17/2016 21:30:00 AM	Lead, Total	0.046	mg/L	0.069		0.065	
Outfall 5	2/17/2016 21:30:00 AM	Oil and Grease	8.4	mg/L	15		None	
Outfall 5	2/17/2016 21:30:00 AM	Total Suspended Solids (TSS)	17	mg/L	100		None	
Outfall 5	2/17/2016 21:30:00 AM	Zinc, Total	0.3	mg/L	0.11	**2.73**	0.12	**2.50**
Outfall 5	2/17/2016 21:30:00 AM	pH		SU	6.0-9.0		None	
2014/2015 Wet Season								
In group plan no sampling requirement this year								

Exhibit 1
Sample Results for Allan Co.
Baldwin Park

Sample Location (14618 Arrow facility)	Date/Time of Sample Collection	Parameter	Result	Units	Benchmark	Magnitude of Exceedance	CTR	Magnitude of Exceedance
2013/2014 Wet Season								
In group plan no sampling requirement this year								
2012/2013 Wet Season								
In group plan no sampling requirement this year								
2011/2012 Wet Season								
Outfall 1	10/5/11 9:30	Aluminum, Total	0.1	mg/L	0.75		None	
Outfall 1	10/5/11 9:30	Chemical Oxygen Demand (COD)	180	mg/L	120	1.50	None	
Outfall 1	10/5/11 9:40	Copper, Total	0.016	mg/L	0.0123	1.30	0.013	1.23
Outfall 1	10/5/11 9:30	Electrical Conductivity @ 25 Deg. C	245	umhos/cm			None	
Outfall 1	10/5/11 9:30	Iron, Total	0.622	mg/L	1		None	
Outfall 1	10/5/11 9:30	Lead, Total	0.012	mg/L	0.069		0.065	
Outfall 1	10/5/11 9:30	Oil and Grease	ND	mg/L	15		None	
Outfall 1	10/5/11 9:30	Total Suspended Solids (TSS)	13	mg/L	100		None	
Outfall 1	10/5/11 9:30	Zinc, Total	0.047	mg/L	0.11		0.12	
Outfall 1	10/5/11 9:30	pH	6.72	SU	6.0-9.0		None	
Outfall 4	10/5/11 9:40	Aluminum, Total	0.1	mg/L	0.75		None	
Outfall 4	10/5/11 9:40	Chemical Oxygen Demand (COD)	105	mg/L	120		None	
Outfall 4	10/5/11 9:40	Copper, Total	0.033	mg/L	0.0123	2.68	0.013	2.54
Outfall 4	10/5/11 9:40	Electrical Conductivity @ 25 Deg. C	184	umhos/cm			None	
Outfall 4	10/5/11 9:40	Iron, Total	1.29	mg/L	1	1.29	None	
Outfall 4	10/5/11 9:40	Lead, Total	0.031	mg/L	0.069		0.065	
Outfall 4	10/5/11 9:40	Oil and Grease	ND	mg/L	15		None	
Outfall 4	10/5/11 9:40	Total Suspended Solids (TSS)	39	mg/L	100		None	
Outfall 4	10/5/11 9:40	Zinc, Total	0.25	mg/L	0.11	2.27	0.12	2.08
Outfall 4	10/5/11 9:40	pH	7.08	SU	6.0-9.0		None	
Outfall 5	10/5/11 9:50	Chemical Oxygen Demand (COD)	19	mg/L	120		None	
Outfall 5	10/5/11 9:50	Copper, Total	0.018	mg/L	0.0123	1.46	0.013	1.38
Outfall 5	10/5/11 9:50	Electrical Conductivity @ 25 Deg. C	72	umhos/cm			None	
Outfall 5	10/5/11 9:50	Iron, Total	0.121	mg/L	1		None	
Outfall 5	10/5/11 9:50	Lead, Total	ND	mg/L	0.069		0.065	
Outfall 5	10/5/11 9:50	Oil and Grease	ND	mg/L	15		None	

Exhibit 1
Sample Results for Allan Co.
Baldwin Park

Sample Location (14618 Arrow facility)	Date/Time of Sample Collection	Parameter	Result	Units	Benchmark	Magnitude of Exceedance	CTR	Magnitude of Exceedance
Outfall 5	10/5/11 9:50	Total Suspended Solids (TSS)	ND	mg/L	100		None	
Outfall 5	10/5/11 9:50	Zinc, Total	0.271	mg/L	0.11	**2.46**	0.12	**2.26**
Outfall 5	10/5/11 9:50	pH	7.25	SU	6.0-9.0		None	

Exhibit 2
Dates of >0.1 Inches of Precipitation
Allan Co. - Baldwin Park

Date	Day of Week	Daily Precip
5/15/11	Su	0.1
5/18/11	W	0.14
10/5/11	W	1.56
11/4/11	F	0.57
11/6/11	Su	0.35
11/20/11	Su	0.67
12/12/11	M	0.68
1/21/12	Sa	0.55
1/23/12	M	0.38
2/11/12	Sa	0.15
2/15/12	W	0.45
2/27/12	M	0.58
3/17/12	Sa	0.96
3/25/12	Su	0.91
3/31/12	Sa	0.19
4/11/12	W	0.72
4/13/12	F	1.51
4/25/12	W	0.18
4/26/12	Th	0.17
10/11/12	Th	0.53
11/8/12	Th	0.15
11/17/12	Sa	0.32
11/29/12	Th	0.12
11/30/12	F	0.45
12/1/12	Sa	0.12
12/2/12	Su	0.38
12/3/12	M	0.28
12/12/12	W	0.29
12/13/12	Th	0.27
12/18/12	T	0.52
12/24/12	M	0.44
12/26/12	W	0.27
12/29/12	Sa	0.21
1/24/13	Th	0.77
1/25/13	F	0.23
2/8/13	F	0.12
2/19/13	T	0.41
3/8/13	F	0.45
5/6/13	M	0.5

Exhibit 2
Dates of >0.1 Inches of Precipitation
Allan Co. - Baldwin Park

Date	Day of Week	Daily Precip
5/9/13	Th	0.13
11/21/13	Th	0.56
11/29/13	F	0.11
12/19/13	Th	0.36
2/6/14	Th	0.16
2/27/14	Th	0.43
2/28/14	F	2.35
3/1/14	Sa	0.89
4/25/14	F	0.26
10/31/14	F	0.15
11/1/14	Sa	0.45
11/30/14	Su	0.19
12/2/14	T	1.51
12/3/14	W	0.53
12/12/14	F	1.81
12/16/14	T	0.21
12/17/14	W	0.21
12/30/14	T	0.2
1/10/15	Sa	0.12
1/11/15	Su	0.4
1/26/15	M	0.18
2/22/15	Su	0.74
2/23/15	M	0.44
3/2/15	M	0.26
4/7/15	T	0.24
4/25/15	Sa	0.17
5/8/15	F	0.14
5/14/15	Th	0.57
7/18/15	Sa	0.3
7/19/15	Su	0.96
9/15/15	T	1.35
10/4/15	Su	0.23
11/3/15	T	0.32
12/10/15	Th	0.12
12/13/15	Su	0.3
12/19/15	Sa	0.11
12/22/15	T	0.19
1/5/16	T	2.47
1/6/16	W	1.19

Exhibit 2
Dates of >0.1 Inches of Precipitation
Allan Co. - Baldwin Park

Date	Day of Week	Daily Precip
1/7/16	Th	0.27
1/31/16	Su	0.66
2/17/16	W	0.47
2/18/16	Th	0.19
3/6/16	Su	1.07
3/7/16	M	0.5
3/11/16	F	0.56
4/9/16	Sa	0.45